

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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BERNICE M. GOULD,

Plaintiff-Appellant,

v

THOMAS B. HUCK, P.C.,

Defendant-Appellee.

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UNPUBLISHED  
September 9, 2008

No. 279538  
Iosco Circuit Court  
LC No. 06-003053-NM

Before: Donofrio, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

In this legal malpractice action, plaintiff, Bernice M. Gould, appeals as of right from the trial court's order granting summary disposition in favor of defendant, Thomas B. Huck, P.C. Because plaintiff did not bring her cause of action within two years of defendant's last service or within six months of her learning of a possible cause of action for malpractice, the trial court properly concluded that plaintiff's malpractice claim was time-barred, and we affirm.

I. Facts

Plaintiff and her late husband, Robert Gould, married in 1984. In 1999, the couple retained defendant to engage in estate planning services. After meeting with the Goulds, defendant prepared a joint trust agreement for the couple as well as individual wills for both plaintiff and her husband. The Goulds executed the joint trust agreement and their respective wills on July 19, 1999. The Goulds paid defendant \$753 for professional services rendered and did not contact defendant for further services regarding the joint trust agreement or wills. Robert Gould died on February 10, 2004. Following Robert Gould's death, litigation ensued in probate court between plaintiff and Robert Peppler, Robert Gould's son-in-law, who had both been named trustees of the Goulds' joint trust. On July 1, 2004 Peppler's attorney requested that defendant provide an affidavit regarding the joint trust. Defendant provided the affidavit as requested on July 13, 2004. Further, as part of that probate matter, plaintiff's attorney deposed defendant on July 28, 2004 regarding whether he drafted the testamentary documents at issue, the Goulds' decision to execute a joint trust rather than separate trusts, the features of the joint trust, and supposed inconsistencies in the testamentary documents.

Plaintiff commenced the instant action against defendant on March 13, 2006 alleging legal malpractice. Defendant answered denying liability for the reason that the claim was barred by

the applicable statute of limitations. Defendant then filed a motion for summary disposition pursuant to MCR 2.116(c)(7) and MCR 2.116(c)(10). After entertaining oral argument on the matter, the trial court granted defendant's motion for summary disposition and entered an order of dismissal.

## II. Standard of Review

We review de novo a motion for summary disposition pursuant to MCR 2.116(C)(7). *Trentadue v Buckler Lawn Sprinkler*, 479 Mich 378, 386; 738 NW2d 664 (2007). In the absence of disputed facts, this Court also reviews de novo issues regarding whether a cause of action is barred by the applicable statute of limitations. *Id.* Summary disposition is appropriate under MCR 2.116(C)(10) if no material factual dispute exists and the moving party is entitled to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion brought under subrule (C)(10), a court considers all the evidence, affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Id.* at 30-31.

## III. Analysis

“A legal malpractice claim must be brought within two years of the date the claim accrues, or within six months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later.” *Kloian v Schwartz*, 272 Mich App 232, 237; 725 NW2d 671 (2006). MCL 600.5805(6) provides that “[e]xcept as provided in this chapter, the period of limitations is 2 years for an action charging malpractice.” And, MCL 600.5838(2) provides that “[e]xcept as otherwise provided in section 5838a, an action involving a claim based on malpractice may be commenced at any time within the applicable period prescribed in sections 5805 or 5851 to 5856, or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later.” MCL 600.5838(1) is a codification of the common law “last treatment rule.” *Levy v Martin*, 463 Mich 478, 482-484, 490; 620 NW2d 292 (2001). It provides:

Except as otherwise provided in section 5838a, a claim based on the malpractice of a person who is, or holds himself or herself out to be, a member of a state licensed profession accrues at the time that person discontinues serving the plaintiff in a professional . . . capacity as to the matters out of which the claim for malpractice arose, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim. [MCL 600.5838(1).]

### A. MCL 600.5805(6)

Plaintiff asserts that defendant's representation was not limited to the drafting of the testamentary documents in 1999 because defendant's last date of professional service was actually July 13, 2004 when he provided his affidavit regarding his professional services rendered. Defendant counters that plaintiff had two years from July 19, 1999 to timely file suit pursuant to MCL 600.5805(6), and since she delayed until March 13, 2006 she has missed the deadline by several years. Defendant further argues that the July 13, 2004 affidavit was in no way a furtherance of the 1999 attorney-client relationship between the parties because defendant

prepared the affidavit at the request of Peppler's attorney in the probate matter, not plaintiff or her attorney.

An attorney discontinues serving a client when he "is relieved of that obligation by the client or the court[.]" or "upon completion of the specific legal service that the lawyer was retained to perform." *Kloian, supra* at 237-238; see also *Maddox v Burlingame*, 205 Mich App 446, 450; 517 NW2d 816 (1994). Thus, "a plaintiff's legal malpractice claim accrues on the day that the attorney last provides professional service in the specific matter out of which the malpractice claim arose." *Id.*, citing *Gebhardt v O'Rourke*, 444 Mich 535, 543; 510 NW2d 900 (1994). "In general, once an attorney has discontinued serving the plaintiff-client, additional acts by the attorney will not delay or postpone the accrual of a legal malpractice claim." *Id.* at 238 n 2. In other words, follow-up and incidental activities do not serve to extend an otherwise terminated attorney-client relationship. See *Bauer v Ferriby & Houston, PC*, 235 Mich App 536, 539; 599 NW2d 493 (1999).

After reviewing the record, we conclude that the attorney-client relationship in this case terminated on July 19, 1999 when the Goulds executed the joint trust and their wills. The record is clear that defendant completed all estate planning services he was hired to complete prior to that July 19, 1999 and the Goulds did not contact him for further services related to those documents after that date. Further, defendant billed the Goulds for services rendered and the Goulds paid in full. Thus, the Goulds' execution of the documents defendant was retained to draft on July 19, 1999 constituted the "completion of the specific legal service that the lawyer was retained to perform." *Kloian, supra* at 237-238. As such, plaintiff's legal malpractice claim accrued on July 19, 1999 and the two year statute of limitations began running on that date. The two year statute of limitations thus expired on July 19, 2001. We do not construe defendant's July 14, 2004 affidavit as an extension of the professional relationship beyond the July 19, 1999 date because there is no dispute that defendant prepared the affidavit at the request of Peppler's attorney in the probate matter, not plaintiff or her attorney. Thus plaintiff's March 13, 2006 complaint was barred by the applicable two-year statute of limitations, MCL 600.5805(6), in conjunction with, MCL 600.5838(1), the last treatment rule.

#### B. MCL 600.5838(2)

Plaintiff also contends that there is support for the assertion that she should not have been able to discover her cause of action against defendant until July 2006 when the probate court ruled on her petition for interpretation and construction of the trust. She argues her claim is timely based on the six-month provision found in MCL 600.5838(2). Defendant counters that plaintiff either discovered or could have discovered the existence of a possible cause of action for legal malpractice against defendant significantly more than six months prior to the date she filed her complaint on March 13, 2006. In support, defendant asserts that the struggle regarding the joint trust ensued shortly after plaintiff's husband Robert's death on February 10, 2004 and defendant was deposed by plaintiff regarding the testamentary documents on July 28, 2004. Thus, it is defendant's position that plaintiff either discovered or could have discovered the existence of a possible cause of action for legal malpractice against defendant on July 28, 2004 and her complaint was not timely filed even when considering the six-month provision found in MCL 600.5838(2).

After reviewing the record, we conclude that the six-month discovery rule contained in MCL 600.5838(2) does not apply in this case to extend the statute of limitations beyond the general two-year period provided in MCL 600.5805(6). Plaintiff bears the burden of proof with respect to the applicability of the discovery rule, MCL 600.5838(2), and she has not met her burden. The record shows that plaintiff's counsel in the probate matter deposed defendant extensively regarding his drafting of the testamentary documents, the decision to execute a joint trust rather than separate trusts, and other possible ambiguities present in the documents. Due to the litigation with Peppler regarding the trust and the discovery that followed including defendant's deposition, we conclude that plaintiff either discovered or should have discovered the existence of the potential malpractice claim, at the latest, by the date of defendant's deposition, July 28, 2004. MCL 600.5838(2). Plaintiff's complaint was not filed until March 13, 2006, obviously well over six months later. Therefore, the trial court properly concluded that the claim is barred.

Affirmed.

/s/ Pat M. Donofrio  
/s/ William B. Murphy  
/s/ E. Thomas Fitzgerald